

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 26 1992

In the Matter of)
)
The Telephone Consumer Protection)
Act of 1991)
)

CC Docket No. 92-90

Federal Communications Commission
Office of the Secretary

TO: The Commission

COMMENTS OF GANNETT CO., INC.

Gannett Co., Inc. ("Gannett"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby submits its Comments in the above-captioned proceeding. Gannett is the largest U.S. newspaper group, with 81 daily newspapers, including USA TODAY, more than 50 non-daily publications, and USA WEEKEND, a weekly newspaper magazine.

Most newspapers, including many of those published by Gannett, rely heavily on telemarketing to reach current, former and new customers for a variety of purposes, including subscription sales and debt collection. Not only do newspapers benefit tremendously from this practice, but telemarketing also serves the public interest. Newspapers are an invaluable source of information, rooted in the community and responsive to community standards. To limit newspapers' ability to conduct legitimate telemarketing practices would constrain newspapers' ability to serve the public. To illustrate the detrimental effect that severe restrictions on a newspapers' ability to conduct

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telemarketing would have, Gannett has attached letters from publishers and circulation directors of several Gannett newspapers ("Appendix") describing how telemarketing impacts circulation, and the steps taken to insure that customers do not receive unwanted calls.

The statements contained in the Appendix support the proposition that telemarketing is the most effective means to maintain and increase the circulation necessary to a newspaper's survival. In fact, up to eighty-five percent of Gannett's new newspaper subscriptions are a direct result of telemarketing. This figure not only is indicative of the importance of telemarketing to newspapers, it illustrates that consumer reaction to newspaper solicitation calls is positive.

Telemarketing is the primary means through which newcomers to a community are made aware of the availability of the local newspaper. Telemarketing further benefits consumers by saving them money, as often readers are not aware that home delivery is significantly less costly than paying newsstand prices. Moreover, telemarketing serves to notify customers of additional services that they typically appreciate, such as a new Sunday edition or a special discount.

Gannett recognizes the important purpose that the Telephone Consumer Protection Act of 1991 ("TCPA") serves by protecting individuals from telemarketing which is an intrusive invasion of privacy. However, as newspapers thrive on the good will of the public, they are particularly cognizant of and sensitive to the desires of their customers, and Gannett's

newspapers (and, Gannett believes, most newspapers) conduct their telemarketing campaigns accordingly, as demonstrated by the letters contained in the Appendix.

Telemarketing can be conducted without intruding on privacy interests and often provides significant public interest benefits. It is for these reasons that Gannett urges the Commission to establish rules implementing the TCPA that allow newspapers the flexibility to continue their legitimate, customer-friendly and effective telemarketing practices. Specifically, Gannett believes that the Commission should adopt rules which (1) exempt debt collection calls from liability; (2) provide for company specific "do not call" databases; (3) broadly define the "business relationship" exemption; and (4) allow telemarketers to contact persons who have changed residence for up to twelve months.

A. The Commission Should Establish Rules that Exempt Debt Collection Calls from Liability

Section 227 of the TCPA prohibits persons from using automatic telephone dialing systems to make calls to residences delivering a message with an artificial or prerecorded voice without the prior express consent of the called party. The overall intent of Section 227 is to protect consumers from unrestricted telemarketing which is an intrusive invasion of privacy. The TCPA authorizes the Commission to propose exemptions to this prohibition, however. Gannett urges the Commission to expressly state in its rules that debt collection calls fall under the proposed exemption for commercial calls that do not offer a

product or service and/or under the "business relationship" exemption. Alternatively, the Commission should create a separate exemption for debt collection.

Newspapers use automatic dialers with recorded voice messages for legitimate billing and collection efforts pertaining to classifieds, advertisements, and subscriptions. Gannett agrees with the Commission's conclusion that a debt collection call is a commercial call that does not adversely affect the privacy concerns the TCPA seeks to protect. Clearly, a business relationship results when a customer places an advertisement or subscribes to a newspaper. In doing so, the customer assumes responsibility for prompt payment. Therefore, the customer can and should expect the newspaper to contact him regarding a past due account. As the customer has voluntarily chosen to do business with the newspaper, a collection call cannot be labeled "intrusive," and clearly falls within the "business relationship" exemption.

Including debt collection calls within the business relationship exemption is not only logical but also serves the public interest and is consistent with Congress' intent to preserve legitimate telemarketing practices. The legislative history of the TCPA demonstrates that Congress did not intend to prohibit the use of automatic dialers with prerecorded messages for use in debt collection, and with legitimate reason. See Remarks of Sen. Hollings, 137 Cong. Rec. S16206 (Nov. 7, 1991). For example, with respect to newspapers, the volume of collection calls the newspaper must make, coupled with the relatively small

balance due on each account, necessitates a low-cost method of collection. Automatic dialing with a recorded voice message advising the customer to call regarding his account has proven to be the most cost effective and efficient means available to newspapers to accomplish this task, and has had positive results. For instance, when a private party places a classified ad, the newspaper's sole criteria for extending credit is that the calling party has a phone number. The average delinquent bill is less than forty dollars. Because the newspaper is able to use automatic dialing with a recorded message informing the customer that a question exists concerning the account, both the newspaper and its customers benefit -- the called party is made aware of the inquiry, the newspaper is able to collect debts at low cost and the customer has the privilege and convenience of placing an ad on credit.

B. Company-Specific Do Not Call Lists are the Most Effective and Cost Efficient Means to Deter Unwanted Calls

Gannett strongly opposes the use of a single national database to list persons who object to telephone solicitations. Instead, Gannett proposes the use of company-specific "do not call lists." As described in the Appendix attached hereto, do not call lists have been successfully implemented by Gannett newspapers.

The TCPA states that the Commission may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. However,

the TCPA leaves the Commission the option to explore other alternatives, and we urge the Commission to do so.

The notion of creating a national database is unrealistic and the database's ability to deter unwanted calls is questionable. The costs of compiling and operating a national database are almost certainly prohibitive and it is simply not clear who would pay the freight. The TCPA expressly prohibits charging consumers for participation in the database, and it is apparent given the President's statement with regard to the legislation that any database would not be a government-sponsored institution and would not receive federal funds or a federal contract for its establishment. See NPRM at 13-14.

Gannett agrees that it is not in the public interest to pass on to taxpayers the cost of a national database system, especially given doubts about its effectiveness. As the Commission correctly points out, consumers who sign up for the database would continue to receive calls for the three to six months it might take for updates, and in addition would continue to receive all calls exempted by the TCPA.

Gannett believes that companies should be allowed to employ a self-policing mechanism to prevent unwanted calls. While one type of telephone solicitation may "offend" a certain customer, another type may not. A company-specific standard facilitates consumer choice. As Gannett's newspapers have proven, such a system is cost effective and successful in fulfilling customer desires. Especially with respect to newspapers, the very localness of the product calls for a community-imposed standard

rather than a national one. Gannett newspapers have successfully implemented systems to deal with customers and prospective customers who do not wish to be called. To do so is in the newspaper's best interest, as newspapers trade on the public's good will and desire to avoid expending time and investment in contacting subscribers who do not wish to be contacted. If a customer indicates that he does not wish to be called, his number is filtered from the system. On a company-specific basis, lists can be updated frequently, at less cost, and with better results.

C. Defining the "Established Business Relationship"
Exemption Broadly will Allow Legitimate Telemarketing
Without Compromising Individual Privacy Rights

Gannett endorses the Commission's tentative conclusion that the privacy rights the TCPA intends to protect are not adversely affected where the called party has or had a voluntary business relationship with the caller. Therefore, Gannett agrees that there should be an exemption from liability for calls placed by a caller, or on behalf of a caller, to its clientele, i.e., those persons with whom the caller has a "business relationship." Consistent with the legislative history of the TCPA and Congress' intent to continue to permit legitimate telemarketing practices, Gannett believes that "business relationship" should be defined broadly.

In the context of newspapers, calls to current subscribers and classified and other advertisers clearly fall within the "business relationship" exemption. And, Gannett believes, so too should former customers, i.e., persons who have

subscribed to the newspaper or placed an advertisement at some time within the prior two years. Former customers have established a relationship with the newspaper and thus calls to these individuals do not have the same intrusiveness as a cold contact. Telemarketing directed at these persons often is appreciated, as they may have let a subscription lapse inadvertently, or may wish to renew a subscription or place an additional ad based on a special offer or discount. While two years is an arbitrary period, it is a reasonable one that can be effectively monitored.

D. Persons Who Have Changed Residence Have a Reasonable
Expectation That They will be Contacted for
Up to Twelve Months

Gannett urges the Commission to provide in its rules that individuals should expect to receive calls for up to twelve months after moving to a new address. Such a rule would be in the public interest because it allows consumers a reasonable period to become aware of services available in their community. The legislative history of the TCPA confirms that a rule granting telemarketers leeway to reach persons who have changed residence is consistent with Congress' intent. In fact, Congress expressly recognized that after a change in a person's telephone number, a telephone subscriber should reasonably expect to receive telemarketing calls during the first six to twelve months. Congress also recognized that telemarketing calls offer a sizeable benefit, as "[t]his initial contact during that period may actually help introduce new residents to local goods and services

available in their new community." Remarks of Rep. Rinaldo, 137 Cong. Rec. H11311 (Nov. 26, 1991). Moreover, Congress expressed an overall intent to exempt holders of second-class mail permits or that conduct primarily local solicitations, such as newspapers, from these requirements, reasoning that these businesses are "part of the community, and are subject to the scrutiny of the community, and must live by their reputation in the community" Remarks of Sen. Gore, 137 Cong. Rec. S16204 (Nov. 7, 1991).

No matter what telemarketing controls are selected by the FCC, implementation may take up to 12 months for a new resident. Gannett newspapers have had significant experience in reaching new residents, and can affirm that it takes time for a number of reasons. Some states prohibit local utilities from providing a list. Most telemarketers have a policy against monopolizing answering machines, and often it takes many attempts to reach a "live" person. In addition, some sequential dialing machines (with a live operator), only reach reconnects once a year. Therefore, anything less than a twelve month grace period would be impractical if telemarketers are to be permitted to reach consumers who have changed residence.

CONCLUSION

Gannett supports the important purpose that the TCPA serves by protecting individuals from telemarketing which is an intrusive invasion of privacy. However, that purpose must be weighed against the significant commercial and public interest

benefits which legitimate telemarketing practices provide. Therefore, Gannett urges the Commission to establish rules implementing the TCPA that (1) exempt debt collection calls from liability; (2) provide for company specific "do not call" databases; (3) broadly define the "business relationship" exemption; and (4) allow telemarketers to contact individuals who have changed residence for up to twelve months.

Respectfully submitted,

GANNETT CO., INC.

By: Peter D. O'Connell
Peter D. O'Connell

Kathleen A. Kirby
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Its Attorneys

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Dated: May 26, 1992

APPENDIX

Letter from Harry M. Whipple
President and Publisher
The Cincinnati Enquirer

Letter From Dan A. Martin, Publisher
Mike Huot, Circulation Director
The Fort Myers News-Press

Letter from Richard J. Ferris
Circulation Director
The Lansing State Journal

Letter from J.C. Hickman
Publisher
The Bellingham Herald

The Cincinnati Enquirer

617 VINE STREET
CINCINNATI, OHIO 45201
(513) 369-1094

HARRY M. WHIPPLE
PRESIDENT AND PUBLISHER

May 18, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

Dear Ms. Searcy:

RE: CC Docket No. 92-90

There are provisions in the Telephone Consumer Protection Act of 1991 that will have a negative impact on how The Cincinnati Enquirer provides service to its customers. Specifically, the areas of concern are the restrictions placed on prerecorded messages and the proposed establishment of a national database of residential telephone subscribers who object to telemarketing solicitations.

Prerecorded Messages

Presently, The Enquirer uses automated dialing and a prerecorded message to contact delinquent classified advertisers. The sole criteria for our extending credit to these customers is that they have a telephone number. They are private-party individuals who place classified advertisements with us irregularly, mostly by telephone.

Our message contains no solicitation. It indicates that we have a question on the customer's classified advertising account and asks that he or she call us to compare records. We make these calls between 10:00 a.m. and 9:00 p.m., Monday through Saturday. Customers generally do not find these calls offensive, and the procedure helps them protect their credit rating.

We call customers only when their account is delinquent thirty days or more. We call them once a week for four weeks. If the account remains unpaid at sixty days, we turn it over to a collection agency.

The average delinquent bill is less than \$40. Thus, we need a low-cost method for collection of these outstanding invoices. The automated dialing system is a valuable tool which enables us to continue a business relationship that most often originates with a telephone call from the customer.



A WORLD OF DIFFERENT VOICES
WHERE FREEDOM SPEAKS

Ms. Donna R. Searcy
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We respectfully request the FCC consider an exemption to the Act which would allow the use of a prerecorded or artificial voice for legitimate billing and collection efforts by companies such as The Cincinnati Enquirer which are otherwise in full compliance with Federal and state laws.

National Database

A national database of individuals who do not want to receive telemarketing calls will adversely impact Enquirer circulation sales. Telemarketing accounts for 64% of new subscription sales in Cincinnati and is representative of newspaper efforts in other cities.

The Cincinnati Enquirer uses live telemarketing operators who make the following types of calls:

- a) To current subscribers about increasing the frequency of their subscriptions (other than seven-day customers).
- b) To previous subscribers about restarting their subscriptions.
- c) To new residents of the community about subscribing to our newspapers. Typically, these individuals are interested in subscribing and welcome our calls. Obviously, if these persons were entered in a national database to avoid receiving other sales calls, we would be unable to contact them.

We believe there is a need for a "do-not-call" list, but it is a list that should be maintained by individual companies with telemarketing operations. The costs of setting up, maintaining and accessing a national database would surely be passed on to the consumer. Twenty percent of our area's telephone numbers are reassigned each year. To administer that frequency of change on a national basis is unnecessary.

The Cincinnati Enquirer already has a system in place to deal with customers and prospective customers who do not wish to be called. Once a complaint is received, that person's telephone number is entered into the system and it is filtered from all future sales efforts by our operators. Obviously, it is in our best interests not to call these persons, and we feel strongly that it is our responsibility to see that they do not receive unwanted calls.

While a newspaper operates as a business, it also fulfills a unique public-service role in the community. Newspapers provide information that often is not available from any other source. The Cincinnati Enquirer, for example, promotes literacy in the pages of the newspaper and funds the Newspaper-in-Education program which

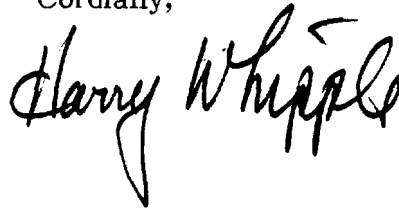
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helps educate youngsters about their community, the nation and the world. Because of activities such as these newspapers may not be perceived in the same light as other companies involved in telemarketing efforts.

We believe strongly in the individual's right to privacy, and we feel our suggestions for localized telemarketing activities will not infringe on that right.

Thank you for your consideration.

Cordially,

A handwritten signature in black ink that reads "Harry Whipple". The signature is written in a cursive style with a large, stylized "H" and a long, sweeping underline.

caf

NEWS-PRESS

(813) 335-0200

2442 Dr. Martin Luther King Jr. Blvd. Fort Myers, FL. 33901-3987

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Reference: CC Docket No. 92-90

Dear Ms. Searcy:

Below we've outlined our concerns and suggestions on the proposed rule-making the FCC is about to conduct.

Concerning the use of Artificial or Prerecorded Voice Systems we agree with the FCC's conclusion that our use of this strategy is intended to improve our debt collection. Ultimately this practice is a customer-friendly procedure. It reminds customers that if action is not taken there will be an interruption in service which they presumably wish to avoid.

Our experience has been that 1,500 calls are made weekly in this manner to circulation and transient advertising accounts. The 1,500 weekly calls represent on average \$24,000 dollars owed the News-Press. To duplicate this calling without the use of an automated system would cost the News-Press an additional \$1,500 weekly. The News-Press complies in full with Federal and State laws governing business to consumer telephone communications. We feel the FCC should not prohibit the use of Automated prerecorded or artificial voice for legitimate billing efforts.

Of concern to us is the implementation of a National Database of telephone subscribers that do not wish to receive Telephone solicitations. The newspaper industry by it's nature has always made sure that customers that do not want to be called are not called. The fact that we are a public service company and trade on the public's good will, mandates that any measure short of not pleasing the public is not "good business." Of particular concern to us over a National Database is the likelihood of large numbers of telephone subscribers electing to not be solicited in general whom otherwise would have welcomed a call from their local paper.

The News-Press has a terrific record of introducing our readers to the convenience of home delivery. Annually we assist over 62,000 readers in saving money by having the News-Press delivered (A home delivery customer saves 13% from the Newsstand price). Each sale is conducted over the phone and verified for accuracy which further improves customer satisfaction.



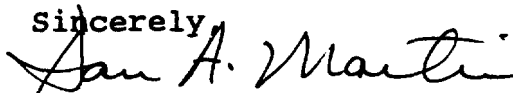
The fact that all telephone calls are conducted by a trained local sales representative is one key to our success. All our telemarketers are readers and consequently, believe in the necessity of a local paper, which contributes to the success we've enjoyed. It comes as no surprise to us that we sometimes have to assure our prospective customers that indeed it is the News-Press calling them and not some other telemarketing outfit (we give out our telephone number, they call us back and then verify). We know for a fact that our older residents (Southwest Florida has been a retirement area for years) and our returning "Snowbirds" are particularly pleased with our solicitation as evidenced by our almost doubling the number of sales made in our winter season versus the summer.

The News-Press currently removes a telephone number from our calling list permanently when requested and we are a proponent of a Company-based Do-Not-Call System. The party requesting the removal is asked if there are any other numbers in the household in order to remove those as well. Further we say the following: "If for any reason you move or change your telephone number, please call this office so that we can take your new telephone number off the list." Our intent is to ensure that that customer is never reached again.

In addition to the customers that specifically ask to be removed are the ones that mention that they are called by telephone solicitors all the time. Although they have not asked us to remove their name from the list, we voluntarily put them on a separate list and call them only twice a year instead of four. This procedure at the News-Press is stringently adhered to. We value our good will with the public.

We feel that the News-Press' and other local newspaper's communities are best served through this voluntary Do-Not-Call System. The very localness of our product would indicate a community-imposed standard rather than a national one.

Sincerely,



Dan A. Martin
Publisher



Mike Huot
Circulation Director

Lansing State Journal

120 E. Lenawee St., Lansing, MI 48919 • Phone 517/377-1024

Richard Ferris
Circulation Director

May 15, 1992

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20541

Dear Ms. Searcy:

Telemarketing is very important to the newspaper circulation industry. Several years ago my department suffered a 4.5% loss in circulation numbers over a 13-week period of time when we discontinued telemarketing due to a tight budget. We quickly re-started telemarketing efforts with a new appreciation of its importance. Our churn (stopping and re-starting of customers) is approximately 50% annually. Since telemarketing orders are responsible for 85% of our new orders, without telemarketing sales to counteract the standard industry stops, circulation and revenue declines.

While telemarketing is a business necessity in our industry, we do follow some good faith policies of not calling on Sunday or any day before 9:00 a.m. or after 9:00 p.m.. We also honor Lansing area residents' requests not to be called by the State Journal. Our Melita Predictive Dialing System allows us to enter phone numbers that we do not want to dial into a strike file. The computer then refers to this file when creating our calling list and omits these numbers. We are able to produce a listing of the phone numbers we have stored in the strike file. We feel it is a good business practice and in our best interest to honor such requests of "do not call me again."

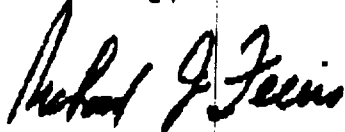
We prefer to control this file as many who may be opposed to general solicitation are not opposed to calls from our telemarketing department informing them of the current subscription specials we are running. Newspapers serve their communities with a very localized product and provide a community service. We do not feel it would be in the best interest of our consumers or our industry to be lumped into a general "national no soliciting" file.

Along with having consideration for Lansing residents who do not want to be called by our telemarketing department, we also have not adopted the recorded message practice currently popular with some companies. We desire to have personal contact and will not be using the pre-recorded message feature in the future.

Another issue of importance is the length of time allowed to contact residents new to the community. Our preference is that nine to twelve months be given for newcomer solicitation.

In summary, a ban on telemarketing would severely cripple the newspaper industry due to a resulting loss of circulation which would eventually lead to a loss in advertising revenues. As a very visible, leading business in the community we are able and motivated to honor consumers' requests of "no solicitation" and prefer to police our own "do not call" file.

Sincerely,



Richard J. Ferris
Circulation Director

The Bellingham Herald

May 21, 1992

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Reference: CC Docket No. 92-90

Dear Ms. Searcy::

This letter is to urge the Commission to adopt a company-based "Do-Not-Call" system rather than a national database system for telemarketing.

In recent years, The Herald has adopted telemarketing to obtain newspaper subscriptions because it is effective. Presently, we rely primarily on calling residents who are new to the community. We purchase telephone numbers of new telephone customers. We call them to offer an introductory plan to subscribe to the newspaper. We have found that many people new to our area -- and that represents about 22% of the total population according to a recent survey -- are interested in the newspaper and had not subscribed sooner because no one had contacted them. The telephone provides a way for the newspaper to make contact with potential customers and provides customers an immediate way to either take action to subscribe or to tell us that they aren't interested. We do not use high pressure tactics. Because we are a 100-year-old newspaper and well established in the community we do not want to jeopardize our standing in the community by being obnoxious or overly-intrusive to our potential customers.

We use random dialing from time to time in order to reach the segment of the population that is not new to the market, but which may have an interest in the newspaper. Even when using that method, our experience is that we'd call the same number perhaps two times at most a year. We are in the process of installing a computer system which will allow us to track our customers and former customers so that we can follow up with our customers and ex-customers when we have special offers or wish to provide a new opportunity for people to the subscribe to The Herald. This new system will allow us to flag people who do not wish to be called again.



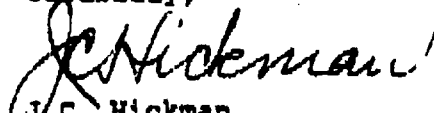
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It seems to me that a national data base system, given the magnitude of potential telephone numbers, would be unwieldy and probably not workable.

I also would like to comment on the prerecorded voice systems some companies are using. While we presently do not use prerecorded messages, we can see in the future that prerecorded messages may be one of the more effective ways to inform people of delivery problems, to inform them of collection or payment problems and to handle other customer-specific situations. As more and more people have telephone answering machines and as first class mail becomes less reliable and slow, the telephone message option becomes more appealing. It is not our intention, however, to use the prerecorded messages for solicitation of subscriptions or sales.

I appreciate your attention and concern.

Cordially,


J.C. Hickman
Publisher